

STATE OF CALIFORNIA
CALIFORNIA OCCUPATIONAL SAFETY AND HEALTH APPEALS BOARD
MINUTES OF THE PUBLIC MEETING & CLOSED SESSION
Held on October 15, 2015
West Covina, California

PRESENT:

Art Carter, Chair
Ed Lowry, Member
Judith Freyman, Member
Han Ha, Interim Executive Officer
Jeff Mojcher, Chief Counsel
Ursula Clemons, Presiding Administrative Law Judge
Autumn Gonzalez, Industrial Relations Counsel
Aaron Jackson, Industrial Relations Counsel
Lee Berlin, Staff Services Manager
Howard Chernin, Administrative Law Judge
Thomas Walsh, Enterprise Risk Management Services, Inc.

MINUTES OF OCTOBER 1, 2015 MEETING:

(Approve or amend minutes of previous Board meeting)

ACTION: Member Lowry moved that the Board approve the draft minutes of the October 1, 2015 Board meeting as amended. Chair Carter seconded. The Board voted to approve the draft minutes of the October 1, 2015 Board meeting as amended.

NEW BUSINESS:

(The Appeals Board hears and discusses new reports presented by staff.)

ACTION: No report.

OLD BUSINESS:

(The Appeals Board hears and/or discusses matters on a follow-up basis.)

ACTION: No report.

LEGISLATION:

(Review and discuss current legislation which may affect the Appeals Board)

ACTION: No report.

CHAIRPERSON'S REPORT:

(Hear report from the Chairperson on activities and issues affecting the Appeals Board.)

ACTION: Chair Carter and Counsel Jackson met with Chris Jagard and Isaac Nicholson, counsel for the Office of the Director, regarding interpretations of the Bagley-Keene Act. They indicated that they are still engaging in some additional research and reviewing how other Boards work to remain compliant with the Act.

BOARD MEMBERS' REPORTS:

(Hear reports from Board Members on activities and issues affecting the Appeals Board.)

ACTION: Member Freyman reported that a recent Board Decision After Reconsideration was discussed in a Worksafe publication. The case concerned heat illness.

EXECUTIVE OFFICER'S REPORT:

(Report regarding administrative matters)

OPERATIONS UPDATE:

ACTION: Interim Executive Officer Ha reported that the OASIS IT team would give a project update after the meeting.

STAFF REPORTS:

(Reports from the Presiding ALJ and the Chief Counsel regarding matters from the Hearing Operations and Legal Units.)

OASIS PROJECT:

ACTION: No report.

RULEMAKING:

ACTION: Counsel Gonzalez reported that the Board's rulemaking package is still being reviewed by Agency attorneys.

LITIGATION UPDATE:

ACTION: Two hearings will be held next week, one in Orange County and one in Sacramento County. In addition, the legal team just filed two briefs and received two new writs.

Any matter not completed at this meeting may be continued to subsequent meetings. If the closed session agenda is not completed on the scheduled day, the closed session will continue from day to day until completion and adjournment.

PUBLIC COMMENT:

(Public comment will be entertained during discussion of each agenda item of the Open Meeting.)

ACTION: Thomas Walsh thanked the Board for meeting in Southern California and expressed the hope that the Board will return when possible.

The Board recessed to its closed session.

DECISIONS OF ADMINISTRATIVE LAW JUDGES:

BURTECH PIPELINE INC., 13-R3D2-0830 AND 0831

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

DPR CONSTRUCTION, A GENERAL PARTNERSHIP, 13-R3D2-3734

ACTION: Member Lowry moved that the Board approve this Decision of an Administrative Law Judge. Member Freyman seconded the motion. The Board voted to approve this Decision of an Administrative Law Judge.

EMPLOYER SOLUTIONS STAFFING GROUP II, LLC, 12-R3D6-3207
FASTEMPS INC., 12-R3D6-3208

ACTION: Member Lowry moved that the Board vote to reconsider this matter on its own motion. Member Freyman seconded. The Board voted to reconsider this matter on its own motion.

PETITIONS FOR RECONSIDERATION:

REALTIME STAFFING SERVICES, INC. dba SELECT STAFFING, 12-R4D3-3687
THROUGH 3689

ACTION: Member Lowry moved that the Board vote to deny this Petition for Reconsideration. Member Freyman seconded. The Board voted to deny this Petition for Reconsideration.

SHIMMICK CONSTRUCTION CO., INC/OBAYASHI CORP., 11-R3D1-2562 THROUGH
2570

ACTION: Member Lowry moved that the Board vote to grant this Petition for Reconsideration. Member Freyman seconded. The Board voted to grant this Petition for Reconsideration.

DENIAL OF PETITION FOR RECONSIDERATION (DRAFT):

CGK INC DBA PREMIER STEEL FABRICATION, 13-R4D4-0518 & 0519

ACTION: Member Lowry moved that the Board vote to approve this draft Denial of Petition for Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Denial of Petition for Reconsideration for signature.

ORDERS DISMISSING APPEAL:

ORANGE COUNTY FIRE AUTHORITY, 14-R3D1-3164
RGS ARBOR CARE, 14-R3D1-3137

ACTION: Member Lowry moved that the Board approve these Orders Dismissing Appeal from Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders Dismissing Appeal from Administrative Law Judges.

MATTERS INVOLVING LATE APPEALS:

(These are matters such as orders dismissing appeal, orders granting leave to file late appeal and orders denying leave to file late appeal)

ORDER DENYING LATE APPEAL

BARRETT BUSINESS SERVICES, INC. DBA BBSI, 15-R3D3-9161

ACTION: Member Lowry moved that the Board approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge. Member Freyman seconded. The Board voted to approve this Order Denying Leave to File Late Appeal of an Administrative Law Judge.

MATTERS HELD OVER FROM PREVIOUS MEETINGS:

(If the Board is unable to conclude its deliberations and/or if any matter(s) is (are) put over from a previous meeting, they will be further discussed.)

MATTERS PENDING RECONSIDERATION:

(If the Appeals Board orders reconsideration of an Order or Decision, it reviews the record and then affirms, rescinds, alters or amends the Order or Decision being reconsidered.)

ACTION METAL RECYCLING, INC., R2D2-1125 THROUGH 1126

CHEVRON U.S.A. INC., 13-R6D3-0655 THROUGH 0662

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

CROP PRODUCTION SERVICES, 09-R6D4-4036 THROUGH 4038

ACTION: The Board discussed this matter.

CYBERNET ENTERTAINMENT, LLC, 14-R6D1-0364
DIONYSUS DREAM INC., DBA NEWPORT MESA CARWASH & SERVICE,
15-R6D5-9087

ECHO ALPHA INC. ET AL, 14-R3D1-0802 THROUGH 0804
EKEDAL CONCRETE, INC., 13-R3D1-0131 THROUGH 0133
GOLDEN STATE WARRIORS, 15-R1D4-9060
HERMAN WEISSKER, INC., 13-R3D1-3279

L & S CONSTRUCTION, INC., 10-R3D1-1821 AND 1822
ACTION: The Board discussed this matter.

McCARTHY BUILDING CO., INC., 11-R4D2-1706 AND 2406
McCARTHY BUILDING CO., INC., 12-R1D4-3458
MCM CONSTRUCTION, INC., 13-R1D2-3851 THROUGH 3854

GONZALO OLASCOAGA DBA GONZALO OLASCOAGA, 13-R6D5-2097
AND 2098

ACTION: Member Lowry moved that the Board vote to approve this draft Decision After Reconsideration for signature. Member Freyman seconded. The Board voted to approve this draft Decision After Reconsideration for signature.

SIERRA FOREST PRODUCTS, 09-R2D5-3979
ACTION: The Board discussed this matter.

UNITED PARCEL SERVICE, 14-R2D1-1779
W.A. RASIC CONSTRUCTION, INC., 13-R3D1-2952

LEGISLATION:

PENDING LITIGATION:

(If the Division of Occupational Safety & Health or the Employer disagrees with a decision after reconsideration or a denial of a petition for reconsideration, either one or both parties may apply to the California Superior Court for a writ of mandate. The Appeals Board receives legal advice from its Legal Unit and provides policy direction regarding pending litigation.)

SUPERIOR COURT:

1. M.C.M. CONSTRUCTION, INC., 34-2009-80000378 (09-9230)
2. FLATIRON CONSTRUCTION CORP, 34-2012-80001029 (10-R4D1-2789)
3. JENSEN PRECAST, 34-2012-80001120 (05-R2D1-2377)

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4. THE HERRICK CORPORATION, 34-2012-80001118 (07-0495)
5. UNDERGROUND CONSTRUCTION, 34-2012-80001124 (09-3518)
6. DUININCK BROS., INC., 34-2012-80001129 (06-2871)
7. C.A. RASMUSSEN, INC., 34-2012-80001241-CU-WM-GDS (08-R4D5-0219 AND 0220)
8. SHIMMICK CONSTRUCTION CO., INC., 34-2012-80001248 (09-R2D3-0399)
9. A TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001258 (05-R2D4-2650 AND 2651)
10. CA DEPT OF FORESTRY, 34-2012-80001263 (10-R2D1-0728)
11. A. TEICHERT & SON, 34-2012-80001265 (05-R2D5-2650 AND 2651)
12. PRESTON PIPELINES, INC., 34-2012-80001277 (09-R6D7-3345)
13. BLUE DIAMOND GROWERS, 34-2012-80001308 (10-R2D1-1280/1281)
14. CLARK PACIFIC PRECAST LLC, et al, 34-2012-80001319 (09-R2D1-0282/0283)
15. A. TEICHERT & SON, DBA TEICHERT CONSTRUCTION, 34-2012-80001332 (09-R4D5-0459 & 0460)
16. PRESTON PIPELINES, INC., 34-2013-8001381 (11-2530)
17. DSS COMPANY DBA KNIFE RIVER CONSTRUCTION, 34-2013-80001575 (12-R5D1-337)
18. HILL CRANE SERVICE, INC., 34-2014-80001730 (12-R4D1-2475)
19. MARTIN J. SOLIS DBA SOLIS FARM LABOR CONTRACTOR, 34-2014-80001749 (2008-R2D1-3414 THROUGH 3418)
20. SHIMMICK-OBAYASHI, 34-2014-80001750 (08-R3D3-5023 THROUGH 5025)
21. TAD VAN NGUYEN, CPF-14-513482 (13-R1D1-9163)
22. BRUNTON ENTERPRISES DBA PLAS-TAL MFG CO., 34-2014-80001817 (09-R6D2-2238 ~ 2241)
23. WEST VALLEY CONSTRUCTION, INC., 34-2014-80001832 (12-R2D5-3526)

24. BARNARD IMPREGILO HEALY JV, CPF-14-513697 (14-R5D1-9013)
25. TL PAVLICH CONSTRUCTION, INC., BS14-9660 (11-R3D6-1303 THROUGH 1310)
26. DAVIS DEVELOPMENT CO., 34-2014-80001892 (10-R3D1-3360 THROUGH 3362)
27. FEDEX GROUND PACKAGING SYSTEM, INC., CIVDS1415696 (13-R3D1-1220)
28. KEY ENERGY SERVICES, INC., S-1500-CV-283958, EB (13-R4D3-2239 ~ 2242)
29. KDTD, INC. DBA KD DEVELOPMENT, INC., 37-2015-00003550-CU-WM-CTL (14-R3D2-1935 & 1936)
30. HHS CONSTRUCTION, 34-2015-80002052 (12-R3D2-0492 THROUGH 0497)
31. MARIA DE LOS ANGELES COLUNGA dba MERCED FARM LABOR, 15CV-00945 (08-R2D1-3093 ~ 3098)
32. STANISLAUS FOOD PRODUCTS CO., 34-2015-80002087 (13-R2D4-0572 ~ 0574)
33. OLDCASTLE PRECAST, INC., 34-2015-80002167 (13-R3D3-0583)

APPELLATE COURT:

1. XL CONSTRUCTION, C074514, 34-2009-80000300 (08-R1D2-1191 THROUGH 1193)
2. AC TRANSIT, A142799, RG13-687314 (08-R1D4-0135)
3. THYSSENKRUPP ELEVATOR CORPORATION, C077115, 34-2013-80001456 (11-R2D1-2217 ~ 2219)
4. CLARK PACIFIC DBA PACIFIC EMBEDDED PRODUCTS, C078953, 34-2011-80000965, (10-R6D2-0188 THROUGH 0191)

ORDERS OF ADMINISTRATIVE LAW JUDGES:

(Written order issued by an Administrative Law Judge after a pre-hearing conference in which the Division of Occupational Safety & Health and the Employer agree to settle an appeal without a hearing. The Board Members review the order and decide if they will reconsider or remand the issued order.)

ACCULIGN SERVICES, INC., 15-R1D4-1561 THROUGH 1563

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ADVANEX AMERICAS, INC., 14-R3D1-2690
AMERICAN LICORICE COMPANY, 15-R1D4-2878 AND 2879
AMERICAN RESOURCES CORPORATION, 15-R4D4-2485
AMERILLUM LLC DBA AMERILLUM BRANDS, 15-R3D2-0384
ANDERSON CHARNESKY STRUCTURAL STEEL INC., 15-R3D3-1780 AND 1781
ANDRUS SHEET METAL, INC. DBA SEAPORT STAINLESS, 15-R6D1-2216 THROUGH 2218
APEX PERSONNEL INC AKA D&D HR SERVICES, 15-R4D4-1189 THROUGH 1193
ASI HASTINGS, INC. DBA ASI HEATING AND AIR CONDITIONING, 15-R6D5-2526
AND 2527
ATLANTIC AUTO CENTER, LLC, 14-R3D5-3554 AND 3555
BARNARD CONSTRUCTION COMPANY, INC., 13-R5D3-1068 THROUGH 1075
BCI COCA-COLA BOTTLING COMPANY OF LOS ANGELES, 15-R4D7-2964
BRAND NAMES HOLDING GROUP, 15-R4D1-1265 THROUGH 1268

BUMBLE BEE FOODS, LLC., 13-R4D4-1450 THROUGH 1455
BUMBLE BEE FOODS, 13-R4D4-1456 AND 1457
BUMBLE BEE FOODS, 13-R4D4-1462

ACTION: Member Lowry recused himself during the discussion of these items.

CALICO BRANDS INC, 15-R4D4-1400 AND 1401
CENTRE FOR NEURO SKILLS, 14-R4D7-1883 AND 1884
COUNTY OF LOS ANGELES DEPARTMENT OF CORONER, 15-R4D1-0114
CRC ROOFING INC., 15-R6D7-1372 AND 1373
DECTON, INC., 14-R3D1-4112
DIAL SECURITY, 15-R4D4-1598 AND 1599
EAGLE MARINE SERVICES LTD, 14-R3D5-3145 AND 3146
EMMONS ROOF SERVICE INC., 15-R3D3-2363 AND 2364
EMPLOYCO USA, INC., 15-R3D1-0490 AND 0491
FAN DISC CORPORATION, DBA JANDI MACHINE & TOOL, 15-R4D3-2001
AND 2002
FIRST SOLAR ELECTRIC, 13-R4D7-3280 THROUGH 3282
FOOTHILL FIRE PROTECTION INC., 15-R2D3-2854
GARZA CONTRACTING, INC DBA A.A. CONTRACTING, 15-R4D7-2989
GERDAU REINFORCING STEEL WEST, 14-R1D3-1433 THROUGH 1435
GIUMARRA VINEYARDS CORPORATION, 15-R4D7-0254
GOLDEN STATE CONSTRUCTION & FRAMING, INC., 15-R1D4-0927 AND 0928
GOLDENWEST LUBRICANTS, INC., 15-R4D1-3124 AND 3125
GRIFFITH COMPANY, 15-R5D2-0792
GRIFFITH COMPANY, 15-R3D3-1395
GRIMMWAY ENTERPRISES, INC., 13-R4D7-3864 THROUGH 3866

ROBERT GROSSMAN DBA SACRAMENTO CABINET SPECIALTIES, 14-R2D1-3872
HERNANDEZ PALLETS, A GENERAL PARTNERSHIP DBA HERNANDEZ PALLETS,
15-R6D5-3264
INDIVEST, INC., 14-R4D1-3166

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INTERNATIONAL METALS EKCO, LTD, 15-R4D1-1333 THROUGH 1335
JAGUR TRACTOR, 14-R4D3-2855
J C INTERIORS INC, 14-R2D5-1782
JD2 INCORPORATION, 15-R2D4-1754
JEROME AND HORNER SHEET METAL, INC, 15-R6D1-0570 THROUGH 0574
J.J. JR.'S TRUCK REPAIR AND MAINTENANCE, 15-R1D4-2948 THROUGH 2952
KAWEAH CONTAINER, INC, 15-R2D5-2086
KIRK CONSTRUCTION, INC., 15-R6D5-1720
KI WAN TAK, 15-R4D1-2162 AND 2163
KUEHNE CONSTRUCTION, 15-R1D2-2947
LAEL'S INTERNATIONAL AUTO SERVICE, 15-R6D5-1167 AND 1168
LANGER JUICE COMPANY INC., 14-R4D4-2728 THROUGH 2732
LASSEN CANYON NURSERY, INC., 15-R2D4-1679 AND 1680
JOE LAU DBA JL CONSTRUCTION, 15-R1D4-2138 THROUGH 2141
LAUSD 49TH STREET ELEMENTARY, 15-R4D1-1263 AND 1264
LANGER JUICE COMPANY INC., 14-R4D4-2728 THROUGH 2732
MAID FAST CONSTRUCTION, 14-R3D2-4114
MANUEL VILLA ENTERPRISES, INC. DBA LA PERLA MEXICANA, 15-R2D4-1574
THROUGH 1578
MASTER METAL PRODUCTS COMPANY, 15-R6D1-1974 THROUGH 1976 AND
15-R6D1-2723
MCDANIEL INC, 14-R4D1-3598 THROUGH 3600
MERITAGE HOMES OF CALIFORNIA, INC., 14-R2D1-2974
MOHANNAD SHAHRIAH DBA PHOTO GALLERY, 14-R2D4-4208
PACIFIC COAST PRODUCERS, 15-R2D1-0524
PERFORMANCE NURSERY INC, 15-R6D2-1223-1224
PERSPECTIVE LANDSCAPING, INC., 15-R6D5-2601 THROUGH 2603
PG&E CORPORATION, 15-R1D4-3187 AND 3188
PHILIPS ELECTRONICS NORTH AMERICA CORPORATION DBA PHILIPS
LIGHTING COMPANY, 15-R4D4-2156
POCINO FOODS COMPANY, 14-R4D4-2770 THROUGH 2771
RICHARD RADAVERO DBA R RADAVERO FARMS, 15-R2D5-1760
REVOLVE SOLAR CA, INC., 15-R2D3-2731
ROBERTO SEBASTIAN VELASQUEZ DBA ROBERT'S FASHION, 15-R6D5-2065
AND 2066
RTG MAINTENANCE CO., 14-R4D3-3946 AND 3947
S & B FILTERS INC, 15-R3D3-2365 THROUGH 2367
SACRAMENTO CITY COLLEGE, 15-R2D1-2051
SAFEWAY, INC. STORE 1824, 14-R2D1-4009
SANTA MONICA COLLEGE, 14-R4D1-3173

SANTOS & SONS DBA SANTOS M & SONS INC, 15-R2D4-1117 THROUGH 1119
JOHN SCHARFFENBERGER, 14-R2D1-4023 THROUGH 4030
DAVID SHAMP, 15-R2D5-2793 THROUGH 2795
SMM FACILITIES, INC., 14-R1D1-3923

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JOSE SOLIS, 15-R4D1-1142 AND 1143
SPAN-O-MATIC INC., 15-R6D2-1422 THROUGH 1425
STAR SCRAP METAL CO., INC., 15-R4D4-1188
STERLING FOODS DBA BUENA VISTA FOOD PRODUCTS, INC., 15-R4D4-1339
THROUGH 1340
STERLING FOODS LLC DBA CARAVAN TRADING COMPANY, 14-R1D4-4204
AND 4205
SWARTZ CONSTRUCTION INC., 15-R3D5-2180
TARGET CORPORATION STORE, #0222, 15-R4D4-2963
TEEFOR2, INC., 15-R4D4-0568
THE BOEING COMPANY, 15-R3D3-0667
THE ZIEGENFELDER COMPANY, 15-R4D4-1700 THROUGH 1704
TRISTAR FLC INC., 15-R3D3-0872-0875
TRUCK ACCESSORIES GROUP INC, 15-R2D1-2686
UFP THORNTON CORPORATE OFFICE, 15-R6D1-2188 AND 2189
ANTONIO VERDUZCO DBA VERDUZCO'S PAINTING, 15-R6D5-3007
WESTERN DRYWALL, INC., 15-R2D4-1677 AND 1678
WESTERN OIL SPREADING SERVICES INC., 15-R4D3-0611 THROUGH 0613
ZINUS, INC., 15-R1D4-2432 AND 2433

ACTION: Member Lowry moved that the Board approve these Orders of Administrative Law Judges. Member Freyman seconded. The Board voted to approve these Orders of Administrative Law Judges. Orders with asterisks are deemed approved as amended.

PERSONNEL:

(Issues regarding staff)

The Closed Session was adjourned at 11:10 a.m. and the Board returned to the Public Meeting. The Appeals Board incorporated by reference its ACTIONS in the Closed Session, as indicated above. The meeting was adjourned at 11.11 a.m.